

REMARKS

Revocation of Power of Attorney

Applicant is enclosing herewith a Revocation of Power of Attorney and Appointment of New Attorney naming BRUCE H. TROXELL as attorney of record in this patent application. It is requested that all further correspondence regarding this matter be forwarded to TROXELL LAW OFFICE PLLC at the address listed on the enclosed form. A CHANGE OF ADDRESS FORM is also being submitted herewith.

Claim to Priority

Applicant is submitting herewith a Claim to Priority, along with a certified copy of Chinese priority Application No. 03 2 04647.2. Acknowledgment of the Claim to Priority and the certified document is respectfully requested.

Claim Rejections

Claims 1-5 are rejected under 35 U.S.C. § 112, second paragraph. Claims 1 and 2 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Huemphner et al. (U.S. 4,037,291) in view of Wagner (U.S. 6,478,316) and further in view of Eichhorn (U.S. 5,517,718). Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Huemphner et al. in view of Wagner and further in view of Eichhorn. Claims 4 and 5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Huemphner et al. in view of Wagner and further in view of Eichhorn.

Drawings

It is noted that no Patent Drawing Review (Form PTO-948) was received with the outstanding Office Action. Thus, Applicant must assume that the drawings are acceptable as filed.

New Claims

By this Amendment, Applicant has canceled claims 1-5 and has added new claims 6-10 to this application. It is believed that the new claims specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and define subject matter that is patentably distinguishable over the cited prior art, taken individually or in combination.

The new claims are directed toward a caster assembly for luggage comprising: a support section (10) connected to a bottom of the luggage and having a cavity (12) having: an upright front wall (122); and a slanted rear wall (123); a wheel mount (30) pivotally connected to a bottom of the support section and having a positioning slot (341) and a caster (31); a bearing (20) located between the support section and the wheel mount; and a pendulum member (50) located in the cavity and being movable between engaged and disengaged positions, the pendulum member being pivotally connected to the support section at an upper section thereof, the pendulum member is spaced apart from the caster in both the engaged and disengaged positions, wherein, when the luggage is tilted in a predetermined direction, the pendulum member pivoting to the engaged position and a lower section thereof is inserted into the positioning slot of the wheel mount locking the wheel mount in a predetermined position, and, when the luggage is in an upright position, the pendulum member pivoting to the disengaged position and the lower section of the pendulum member separating from the positioning slot of the wheel mount allowing the wheel mount to rotate.

Other embodiments of the present invention include: a pivot pin (56), the cavity includes a transverse aperture (121) located on an upper portion thereof, the pendulum member includes a transverse hole (53) located in the upper section thereof, the pivot pin being inserted through the transverse aperture and the transverse hole; the upper section of the pendulum member having a thickness less than a thickness of the lower section of the pendulum member; the wheel mount is pivotally connected to the support section by a rivet (40); and the wheel mount includes a shaft (40) integrally formed therewith for pivotally connecting the wheel mount to the support section.

The primary reference to Huempfer et al. teaches a caster and swivel lock assembly including an automatic locking and releasing member (27) with a bracket (21), bolts (22), fingers (25, 26) (Fig. 2). The locking and releasing member (27) includes a spring latch (28) that frictionally holds the locking and releasing member (27) in a fully raised position. As shown in Figs. 1-6, the locking and releasing member (27) is actuated by movements of the caster wheel (12) in difference directions against the locking and releasing member (27).

Huempfer et al. do not teach the pendulum member is spaced apart from the caster in both the engaged and disengaged positions; when the luggage is tilted in a predetermined direction, the pendulum member pivoting to the engaged position and a lower section thereof is inserted into the positioning slot of the wheel mount locking the wheel mount in a predetermined position; nor do Huempfer et al. teach, when the luggage is in an upright position, the pendulum member pivoting to the disengaged position and the lower section of the pendulum member separating from the positioning slot of the wheel mount allowing the wheel mount to rotate.

The secondary reference to Wagner teaches a roller arrangement for wheeled luggage including a roller (1), a housing (2), a pivoting member (6) with a support (12), and elastomer pads (15, 16).

Wagner does not teach the pendulum member is spaced apart from the caster in both the engaged and disengaged positions; when the luggage is tilted in a predetermined direction, the pendulum member pivoting to the engaged position and a lower section thereof is inserted into the positioning slot of the wheel mount locking the wheel mount in a predetermined position; nor does Wagner teach, when the luggage is in an upright position, the pendulum member pivoting to the disengaged position and the lower section of the pendulum member separating from the positioning slot of the wheel mount allowing the wheel mount to rotate.

The secondary reference to Eichhorn teaches a caster assembly including swivel lock assembly (400) having a lock assembly body (405), a swivel locking lever (410) and a cam follower (420). The swivel locking lever (410) extends from the lock assembly body (405) between support arms (221, 222) (Fig. 4A). The cam follower (420) is urged by and rides along a wheel camming surface (330) of the wheel (300).

Eichhorn does not teach the pendulum member is spaced apart from the caster in both the engaged and disengaged positions; when the luggage is tilted in a predetermined direction, the pendulum member pivoting to the engaged position and a lower section thereof is inserted into the positioning slot of the wheel mount locking the wheel mount in a predetermined position; nor does Eichhorn teach, when the luggage is in an upright position, the pendulum member pivoting to the disengaged position and the lower section of the pendulum member separating from the positioning slot of the wheel mount allowing the wheel mount to rotate.

Even if the teachings of Huempfer et al., Wagner, and Eichhorn were combined, as suggested by the Examiner, the resultant combination does not suggest: the pendulum member is spaced apart from the caster in both the engaged and disengaged positions; when the luggage is tilted in a predetermined direction, the pendulum member pivoting to the engaged position and a lower section thereof is inserted into the positioning slot of the wheel mount locking the wheel mount in a predetermined position; nor does the combination suggest, when the luggage is in an upright position, the pendulum member pivoting to the disengaged position and the lower section of the pendulum member separating from the positioning slot of the wheel mount allowing the wheel mount to rotate.

It is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of Applicant's disclosure to create a hypothetical combination which allegedly renders a claim obvious, unless there is some direction in the selected prior art patents to combine the selected teachings in a manner so as to negate the patentability of the claimed subject matter. This principle was enunciated over 40 years ago by the Court of Customs and Patent Appeals in In re Rothermel and Waddell, 125 USPQ 328 (CCPA 1960) wherein the court stated, at page 331:

The examiner and the board in rejecting the appealed claims did so by what appears to us to be a piecemeal reconstruction of the prior art patents in the light of appellants' disclosure. ... It is easy now to attribute to this prior art the knowledge which was first made available by appellants and then to assume that it would have been obvious to one having the ordinary

skill in the art to make these suggested reconstructions. While such a reconstruction of the art may be an alluring way to rationalize a rejection of the claims, it is not the type of rejection which the statute authorizes.

The same conclusion was later reached by the Court of Appeals for the Federal Circuit in Orthopedic Equipment Company Inc. v. United States, 217 USPQ 193 (Fed.Cir. 1983). In that decision, the court stated, at page 199:

As has been previously explained, the available art shows each of the elements of the claims in suit. Armed with this information, would it then be non-obvious to this person of ordinary skill in the art to coordinate these elements in the same manner as the claims in suit? The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of non-obviousness in a court of law.

In In re Geiger, 2 USPQ2d, 1276 (Fed.Cir. 1987) the court stated, at page 1278:

We agree with appellant that the PTO has failed to establish a *prima facie* case of obviousness. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination.

Applicant submits that there is not the slightest suggestion in either Huempfer et al., Wagner, or Eichhorn that their respective teachings may be combined as suggested by the Examiner. Case law is clear that, absent any such teaching or suggestion in the prior art, such a combination cannot be made under 35 U.S.C. § 103.

Neither Huempfer et al., Wagner, nor Eichhorn disclose, or suggest a modification of their specifically disclosed structures that would lead one having ordinary skill in the art to arrive at Applicant's claimed structure. Applicant hereby respectfully submits that no combination of the cited prior art renders obvious Applicant's new claims.

Summary

In view of the foregoing amendments and remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested. Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

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By:



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